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Security Council Committee established pursuant to resolution 1591 (2005) concerning the Sudan

Note verbale dated 26 July 2013 from the Permanent Mission of Luxembourg to the United Nations addressed to the Chair of the Committee

The Permanent Mission of Luxembourg to the United Nations presents its compliments to the Chair of the Security Council Committee established pursuant to resolution 1591 (2005) concerning the Sudan and, in accordance with paragraph 13 of resolution 2091 (2013), has the honour to transmit herewith information on the implementation by Luxembourg of the United Nations sanctions imposed upon the Sudan (see annex).

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Annex to the note verbale dated 26 July 2013 from the Permanent Mission of Luxembourg to the United Nations addressed to the Chair of the Committee

Report by Luxembourg to the Security Council Committee established pursuant to resolution 1591 (2005)

In accordance with paragraph 13 of resolution 2091 (2013), Luxembourg has the honour to provide the Security Council Committee established pursuant to resolution 1591 (2005) concerning the Sudan with the following information on the specific measures that it has taken to implement effectively the restrictive measures against the Sudan imposed by Security Council resolutions 1556 (2004), 1591 (2005), 1945 (2010) and 2035 (2012).

I. Measures adopted by the European Union

Under European Union law, Security Council resolutions are implemented by decisions of the Council of the European Union in the area of the Common Foreign and Security Policy (CFSP).

These decisions are legally binding on member States and transpose the content of Security Council resolutions into European Union law. In order to make their content not only binding on member States, but also directly applicable within them, these decisions need to be incorporated into regulations of the Council of the European Union. In application of these principles, Luxembourg and the other States members of the European Union have jointly implemented the restrictive measures against the Sudan imposed by Security Council resolutions 1556 (2004), 1591 (2005), 1945 (2010) and 2035 (2012) as follows:

Council Decision 2011/423/CFSP of 18 July 2011 concerning restrictive measures against Sudan and South Sudan and repealing Common Position 2005/411/CFSP

This Council decision reflects the intent of the European Union to consolidate into one instrument all the measures adopted by the Security Council and the Committee established pursuant to resolution 1591 (2005) concerning the Sudan, namely restrictions on entry into the territory; freezing of funds and economic resources; and embargo on arms and related materiel. It also provides for a ban on provision of certain services (technical and financial assistance as regards arms and related materiel).

Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment

This common position sets out common criteria that European Union member States are required to apply when taking any decision to export technology and equipment listed on the European Union Common Military List. Under article 2 (1) of the common position, the first criterion is "respect for the international obligations and commitments of Member States, in particular the sanctions adopted by the UN Security Council". Article 2 (1) (a) states that an export licence shall be denied if approval would be inconsistent with "the international obligations of Member States and their commitments to enforce United Nations ... arms embargoes".

Regulations of the Council of the European Union

Council regulations implement the elements of the above decisions which fall within the competence of the European Union under the Treaty on the Functioning of the European Union, in particular with a view to ensuring their uniform application by economic operators in all European Union member States.

Council regulations are binding in their entirety and are directly applicable in all States members of the European Union as soon as they have been published in the *Official Journal of the European Union*. Funds and economic resources are frozen directly and immediately by Council regulations. No further national implementing provisions are necessary in this respect.

Council Regulation (EC) No. 131/2004 of 26 January 2004 concerning certain restrictive measures in respect of Sudan, as amended by Council Regulation (EC) No. 1353/2004, Commission Regulation (EC) No. 1516/2004, Council Regulation (EC) No. 838/2005, Commission Regulation (EC) No. 1354/2005, Council Regulation (EC) No. 1791/2006 and Council Regulation (EU) No. 1215/2011

The Council adopted this regulation in order to implement the measures set out in its Decision 2011/423/CFSP that fall within the purview of the European Union, in particular, prohibiting the provision of certain services (technical and financial assistance as regards arms and related materiel).

Council Regulation (EC) No. 1184/2005 of 18 July 2005, as amended by Commission Regulation (EC) No. 760/2006, Council Regulation (EC) No. 1791/2006 and Commission Regulation (EC) No. 970/2007

This regulation imposes certain specific restrictive measures directed against certain persons impeding the peace process and breaking international law in the conflict in the Darfur region in Sudan. The Council adopted this regulation in order to implement the measures set out in its Decision 2011/423/CFSP that fall within the purview of the European Union, in particular, the freezing of funds and economic resources.

Council Regulation (EC) No. 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders of member States and those whose nationals are exempt from that requirement

This regulation requires that Sudanese nationals must be in possession of a visa to enter the territory of the European Union.

II. Measures adopted by Luxembourg

(a) *Arms embargo*: In accordance with article 5 of the amended Act of 15 March 1983 on arms and ammunition, the import, manufacture, transformation, repair acquisition, purchase, possession, stockpiling, transport, transfer, sale, export and trade of arms and ammunition are subject to authorization by the Minister of Justice. Furthermore, in accordance with the amended Act of 5 August 1963 regulating the import, export and transit of goods and related technology and with the Grand Ducal Regulation of 31 October 1995 related to the import, export and transit of arms, ammunition and materiel specially designed for military use, and of related technology, an export licence is mandatory for the sale, supply, transfer or

export of arms and related materiel. This applies to all items on the European Union Common Military List. Licence applications are examined, using the relevant criteria, in light of the measures imposed by paragraphs 7 and 8 of resolution 1556 (2004) and paragraph 7 of resolution 1591 (2005) and the exceptions set out in paragraph 7 of resolution 1591 (2005) as specified in paragraph 8 (b) of resolution 1945 (2010) and in paragraph 4 of resolution 2035 (2012). Where applicable, Luxembourg will ensure that notification is given to the Committee prior to any shipment of arms or related materiel. To date, no such shipments have been made from Luxembourg. Article 9, paragraph 1, of the Act of 5 August 1963 regulating the import, export and transit of goods and related technology, as amended by the Act of 4 March 1998, refers to articles 231, 249 to 253 and 263 to 284 of the General Act on Customs and Excise of 18 July 1977, which criminalize violation of or attempted violation of the provisions of the aforementioned Act of 5 August 1963.

(b) *Assets freeze*: Luxembourg's legislation on the financial sector establishes professional obligations and codes of conduct that must be observed at all times and in an ongoing manner by financial institutions. They must therefore exercise customer due diligence and must cooperate with the authorities, particularly the Financial Sector Monitoring Committee (CSSF). Before establishing any business relationship or conducting any transaction, institutions must verify the identity of the customer or beneficial owner. Then, throughout the relationship with the customer, they must monitor transactions, including with respect to the source of funds. Any international measures or sanctions adopted at the political level by the United Nations Security Council are introduced into Luxembourg through European Union regulations that are directly applicable under domestic law. In the event that a customer of a financial institution is targeted by such an international sanction, the institution must apply the sanction by freezing the customer's assets without delay and notifying the Ministry of Finance.

(c) *Travel ban*: Sudanese nationals travelling to Luxembourg require a visa in order to enter the territory of the European Union. The travel restrictions are implemented through the visa application process. Bans on the issuance of visas are implemented primarily by the Convention implementing the Schengen Agreement of 19 June 1990; it regulates the entry of third-country nationals into the Schengen area, of which Luxembourg is a part. Article 5, paragraph 1, of the Convention sets out the conditions for entry into the territories of the Contracting Parties. Paragraph 2 of that article states that an alien who does not fulfil all those conditions must be refused entry into the territories of the Contracting Parties. Since the individuals referred to by measures ordered by the Security Council do not meet the conditions set out in article 5, paragraph 1 (e), of the Convention, which states that the alien must not be considered to be a threat to public policy, national security or the international relations of any of the Contracting Parties, these individuals may not be granted entry into the territory of Luxembourg. Pursuant to articles 15 and 18 of the Convention, this prohibition of entry into the territory applies both to uniform short-stay visas valid for the entire territory of the Contracting Parties and to national long-stay visas. Furthermore, the Act of 29 August 2008 on the free movement of persons and immigration provides that individuals who are not allowed into Luxembourg shall be sent back.